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OFFICE OF PETITIONS

In re Application of :
Labat et al. : DECISION ON PETITION
Application No. 10/821,234 :
Filed: April 7, 2004 :
Attorney Docket No. 821A :

This is a decision on the petition filed September 22, 2004 (certificate of mailing September 21, 2004), requesting that the above-identified application be accorded a filing date of April 7, 2004.

On April 7, 2004, applicant deposited the above-identified application. However, on July 21, 2004, the Office of Initial Patent Examination mailed a "Notice Of Incomplete Application" requiring drawings of applicant's invention and stating that the filing date would be the date of receipt of the omitted drawings. It is noted that the specification filed on April 7, 2004, describes drawing Figure 1 but no drawing was filed on April 7, 2004. Additionally, the Notice stated that an oath or declaration was missing.

On September 22, 2004 (certificate of mailing September 21, 2004), applicant filed present petition, an application data sheet, and a declaration. In the present petition, applicant requested that the application be accorded a filing date of April 7, 2004. Applicant admitted that the application was deposited without drawings on April 7, 2004. However, applicant asserted that drawings are not necessary for the understanding of the invention.

As stated in MPEP § 601.01(f), it is the practice of the United States Patent and Trademark Office (Office) to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence).

MPEP § 601.01(f) also states that:

A nonprovisional application having at least one claim, or a provisional application having at least some disclosure, directed to the subject matter discussed above for which a drawing is usually not considered essential for a filing date, describing drawing figure(s) in the specification, but filed without drawings will be treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g), so long as the application contains something that can be construed as a written description and the names of all the inventors.

This application contains method claims. Therefore, the application should have been treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g).

MPEP § 601.01(g) states that if an application is filed without all of the drawing figure(s) referred to in the specification, a "Notice of Omitted Item(s)" is mailed indicating that the application has been accorded a filing date, but is lacking some of the figures of drawings described in the specification.

In view of the above, the requirement for drawings as set forth in the "Notice of Incomplete Application" of July 21, 2004, was mailed in error and is hereby withdrawn.

The application will be accorded a filing date of April 7, 2004, because drawings were not necessary to obtain a filing date. Accordingly, the petition is **granted**.

The Office of Initial Patent Examination is directed to accord the above-identified application a filing date of April 7, 2004, without any drawings, and to mail a corrected filing receipt.

Any inquiries related to this decision should be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions